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and

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This issue contains:

U.S. Customs Service

T.D. 00–52

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 12

(T.D. 00–52)

RIN 1515–AC36

FORCED OR INDENTURED CHILD LABOR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations with the particular intent to stop illegal shipments of products of forced or indentured child labor and to punish violators. The document amends the Customs Regulations to provide for the seizure and forfeiture of merchandise that is found to be a prohibited importation under 19 U.S.C. 1307, concerning products of convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor under penal sanctions. The amendment makes clear that nothing in the Customs Regulations precludes Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law dealing with prison-labor goods. The amendments form part of a vigorous law enforcement initiative undertaken by Customs to prohibit the importation of merchandise produced by forced or indentured child labor.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Office of Regulations and Rulings, 202–927–2320.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) generally prohibits the importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions. Such prohibitions are enforced by Customs under §§ 12.42–12.44 of the Customs Regulations (19 CFR 12.42–12.44).

If Customs finds, on the basis of information presented and investigated under the procedures described in § 12.42(a)–(e), that a class of merchandise is subject to the prohibition under section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to this effect in the weekly issue of the Customs Bulletin and in the Federal Register, as prescribed in § 12.42(f).

Under § 12.43, an importer is afforded the opportunity to furnish proof within 3 months after importation in order to establish the admissibility of particular imported merchandise detained by Customs under § 12.42(e) or covered by a finding under § 12.42(f), that the particular merchandise being imported is not itself produced with the use of a type of labor specified in section 307.

Section 12.44 deals with the disposition of merchandise determined to be inadmissible under section 307. Currently, § 12.44 provides in pertinent part that such merchandise may be exported at any time within the 3-month period after importation. If not so exported and if no proof of admissibility has been provided, the importer is advised in writing that the merchandise is excluded from entry and, 60 days thereafter, the merchandise is deemed abandoned and will be destroyed unless it has been exported or a protest has been filed under 19 U.S.C. 1514.

FORCED OR INDENTURED CHILD LABOR

A general provision in the Fiscal Year (FY) 1998 Treasury Appropriations Act made clear what is implicit in the law: that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of section 1307. This Act prohibits Customs from using any of the appropriation to permit the importation into the United States of such merchandise. In addition, in the last three State of the Union addresses, President Clinton has pledged to fight abusive child labor.

Following the enactment of the FY 1998 appropriations amendment regarding forced or indentured child labor under penal sanctions, both the Treasury Department and the National Economic Council chaired in-depth interagency discussions aimed at strengthening the capability of the Executive Branch to enforce the prohibition on imports that were produced by forced or indentured child labor under penal sanctions.

To this end, the Treasury Department, by a document published in the Federal Register (63 FR 30813) on June 5, 1998, established a Treasury Advisory Committee on International Child Labor Enforcement, whose ultimate purpose was to support a vigorous law enforcement initiative to stop illegal shipments of products of forced or indentured child labor under penal sanctions and to punish violators. By a document published in the Federal Register (65 FR 11831) on March 6, 2000, the Treasury Department determined that it was in the public interest to renew this Advisory Committee for an additional two-year term beyond its original expiration date (June 22, 2000).

PROPOSED AMENDMENT

As part of the foregoing initiative, by a document published in the Federal Register (64 FR 62618) on November 17, 1999, Customs proposed to amend § 12.42(a) to make expressly clear that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of 19 U.S.C. 1307.

Also, Customs proposed to amend § 12.44 regarding the disposition to be accorded merchandise that is a prohibited importation under section 307. Under this proposed amendment, in the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advised the port director that the proof furnished under § 12.43 did not establish the admissibility of a particular importation of such merchandise, or if no proof was timely furnished in this regard, the merchandise would then be seized and be subject to the commencement of forfeiture proceedings under subpart E of part 162 of the Customs Regulations (19 CFR part 162, subpart E). Currently, such merchandise is permitted to be exported at any time before it is deemed to have been abandoned.

In addition, Customs proposed to amend § 12.44 to state explicitly that nothing in the Customs Regulations (19 CFR Chapter I) precluded Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law (18 U.S.C. 1761–1762) dealing with prison-labor goods.

DISCUSSION OF COMMENT

Counsel on behalf of a domestic trade association submitted the only comment in response to the notice of proposed rulemaking. The trade association supported the proposed amendments. However, the association asked that § 12.42 also be amended to impose a one-year time limit within which Customs would need to complete, and take appropriate action in connection with, an investigation undertaken pursuant to 19 U.S.C. 1307. In this regard, the association wanted § 12.42 further revised to require that persons presenting information of an alleged violation of section 1307 be kept informed, along with any interested domestic producers, and any other interested parties, regarding the continuing progress of an investigation. Finally, the association requested that § 12.42(e) be amended to require that the Commissioner withhold release of any merchandise undergoing investigation for a possible violation of 19 U.S.C. 1307 if there were reasonable grounds to believe that the merchandise was indeed a prohibited importation under section 1307.

CUSTOMS RESPONSE

Customs believes that it would be inappropriate and counterproductive to impose an inflexible time limit in § 12.42 for any investigation initiated under 19 U.S.C. 1307. The quality of the information received regarding suspected violations of section 1307 varies substantially in each case. Extensive and lengthy investigation is required in some cases, and significant barriers (*e.g.*, cultural, political, geographic)

must be overcome, in order to obtain the evidence needed to support lawful Customs action under the statute. Also, the disclosure of information regarding ongoing Customs investigations is generally contrary to agency policy.

Lastly, § 12.42(e) already provides that if the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 1307 is being, or is likely to be, imported, the Commissioner will notify all port directors accordingly. The port directors are then to withhold the release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation. Customs believes that this is sufficient and that no amendment of § 12.42(e) is needed under the circumstances.

CONCLUSION

In view of the foregoing, and following careful consideration of the issues raised by the commenter and further review of the matter, Customs has concluded that the proposed amendments should be adopted.

ADDITIONAL CHANGES

In addition, Customs has determined that the phrase, "including forced or indentured child labor", appearing in proposed § 12.42(a), should be revised to read, "including forced or indentured child labor under penal sanctions", in order to conform precisely with the plain language and requirements of 19 U.S.C. 1307. Also, proposed § 12.44 is revised essentially to retain the provision contained in the current regulation (19 CFR 12.44 (1999)) regarding the disposition to be accorded merchandise that has been detained under § 12.42(e) but that is not subject to a finding under § 12.42(f).

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because the importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by forced labor is prohibited, Customs anticipates that there will not be a substantial number of small entities that would become involved in a prohibited importation. The rule applies to products subject to a "finding" that the class of merchandise was produced with forced or indentured child labor under penal sanctions, a more formal Customs action with a higher burden of proof than simple Customs detention of merchandise based on reasonable suspicion. Also the range of countries and products which are likely to be implicated in findings of forced or indentured child labor under penal sanctions is likely to be fairly narrow. Accordingly, it is certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. Nor does the document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Seizure and forfeiture.

AMENDMENTS TO THE REGULATIONS

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows, and the relevant specific sectional authority is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307 and Pub. L. 105–61 (111 Stat. 1272);

* * * * * * *

2. Section 12.42 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 12.42 Findings of Commissioner of Customs.

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs. * * *

* * * * * * *

3. Section 12.44 is revised to read as follows:

§ 12.44 Disposition.

(a) *Export and abandonment.* Merchandise detained pursuant to § 12.42(e) may be exported at any time prior to seizure pursuant to paragraph (b) of this section, or before it is deemed to have been abandoned as provided in this section, whichever occurs first. Provided no finding has been issued by the Commissioner of Customs under § 12.42(f) and the merchandise has not been exported within 3 months after the date of importation, the port director will ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been timely submitted, or if the Commissioner of Customs advises the port director that the proof furnished does not establish the admissibility of the merchandise, the port director will promptly advise the importer in writing that the mer-

chandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the port director, the merchandise will be deemed to have been abandoned and will be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(b) *Seizure and summary forfeiture.* In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been timely furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(c) *Prison-labor goods.* Nothing in this chapter precludes Customs from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: June 19, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, July 26, 2000 (65 FR 45873)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 26, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF ASHTRAYS/WASTE RECEPTACLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and treatment relating to the classification of floor standing steel cylinder ashtrays and waste receptacles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of floor standing steel ashtray cylinders and waste receptacles and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 8, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings,

Attention: General Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of floor standing steel cylinder ashtrays and waste receptacles. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) 881909, dated January 25, 1993, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to

substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY 881909, dated January 25, 1993, the classification of products commonly referred to as floor standing steel cylinder ashtrays and waste receptacles was determined to be in subheading 9403.20.0030, Harmonized Tariff Schedule of the United States (HTSUS). This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The correct classification of the floor standing steel cylinder ashtrays and waste receptacles is either subheading 7323.93.0080, HTSUS, or 7323.99.9060, HTSUS, depending on the surface finish of the article.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY 881909, and revoke any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964352 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 20, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, January 25, 1993.

CLA 94:S:N:N8:233 881909
Category: Classification
Tariff No. 9403.20.0030,
7308.30.5050, and 7326.90.9090

MR. ED BAKER
A.N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919–9703

Re: The tariff classification of floor standing ashtray cylinders, floor standing ashtray/waste receptacle cylinders, wall mount ashtrays and steel access doors from Canada.

DEAR MR. ED. BAKER:

In your letter dated January 10, 1993, on behalf of Cendrex Inc., Montreal, PQ HIP 2B7, Canada, you requested a tariff classification ruling.

The requested items consist of ashtrays and steel doors. The first group of ashtrays are designed to stand on the floor. Style #C8312 is one of the various models. It is made with a polished chrome top and base, with a diameter measuring 10 inches and a height of 18 inches. The second group is a combination floor standing ashtray/waste receptacle cylinder. Style #CAO324 is one of your various models. It is made with an aluminum black anodized top and painted black screen. The body is made of satin stainless steel. It measures 10 inches in diameter and 24 inches in height. The third group are wall mount ashtrays. Styles #C8242 and 8243 are half moon types that are made of either a satin chrome finish or a satin brass finish. They vary in diameter from 8 to 13 inches. The final group consists of access doors of varying dimensions, made of cold rolled steel. They are to be used to access drywall and masonry construction areas.

The applicable subheading for the Cendrex ashtrays and the ashtrays/waste receptacles will be 9403.20.0030, Harmonized Tariff Schedule of the United States, HTSUS, which provides for other furniture and parts thereof, other metal furniture, other, other. The duty rate will be 4 percent ad valorem. The applicable subheading for the wall mount ashtrays will be 7326.90.9090, HTSUS, which provides for other articles of iron or steel, other. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the Cendrex access doors will be 7308.30.5050, HTSUS, which provides for structures, and parts of structures, of iron or steel: Doors, windows and their frames and threshold for doors: Other, other. The rate of duty will be 2.4 percent ad valorem.

Goods classifiable under subheading 9403.20.0030; 7308.30.5050 & 7326.90.9090, HTSUS, which have originated in the territory of Canada, will be entitled to a free, 2.4 and 2.8 percent ad valorem rate of duty, respectively, under the United States-Canada Free Trade Agreement (CFTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964352ptl

Category: Classification
Tariff No. 7323.93.0080 and 7323.99.9060

MR. ED BAKER
A. N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919–9703

Re: Floor Standing Steel Ashtray Cylinders and Waste Receptacles; NY 881909 modified; HQ 962658.

DEAR MR. BAKER:

In response to your letter of January 10, 1993, on behalf of Cendrex Inc., the Area Director of the New York Seaport issued you NY 881909, on January 25, 1993, which addressed the tariff classification of several articles under the Harmonized Tariff Schedule of the United States (HTSUS). That ruling classified floor standing steel ashtray cylinders and waste receptacles in subheading 9403.20.0030, HTSUS, which provides for other furniture and parts thereof, other metal furniture, other, other. We have reviewed this ruling and determined that that classification is incorrect. Pursuant to the analysis set forth below the correct classification for floor standing steel ashtray cylinders and waste receptacles is either subheading 7323.93.0080, HTSUS, or 7323.99.9060, HTSUS, depending on the exterior finish of the article. This ruling does not change the classification of the other articles in NY 881909.

Facts:

The merchandise covered by this ruling consists of various models of cylindrical ashtrays and various models of combination ashtray/waste receptacles all of which are designed to stand on the floor to collect trash and other waste materials. The articles vary in diameter from 8 to 18 inches and in height from 18 to over 24 inches. All the articles are primarily of steel construction with some aluminum components. The article's surface is either chromed, polished steel or painted.

Issue:

What is the classification of floor standing steel ashtray cylinders and waste receptacles?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:
* * * * * * *	
	Other;
7323.93.00	Of stainless steel.
* * * * * * *	

7323.93.0080			Other.				
*	*	*	*	*	*	*	
7323.99		Other:					
		Not coated or plated with precious metal:					
		Other:					
7323.99.90			Other.				
*	*	*	*	*	*	*	
7323.99.9060				Other.			
7326	Other articles of iron or steel:						
*	*	*	*	*	*	*	
7326.90		Other:					
*	*	*	*	*	*	*	
		Other:					
7326.90.85			Other.				
*	*	*	*	*	*	*	
7326.90.8585				Other.			
9403	Other furniture and parts thereof:						
*	*	*	*	*	*	*	
9403.20.00			Other metal furniture.				
*	*	*	*	*	*	*	
			Other:				
*	*	*	*	*	*	*	
9403.20.0030				Other.			

As noted above, classification of goods is governed by the GRI headings and relevant section and chapter notes. Note 1(k) to Section XV, HTSUS, states that "This section does not cover: * * * (k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings)". Therefore, because Chapter 73 is contained within Section XV, we must first determine whether the waste receptacles are articles of Chapter 94.

The General Chapter Notes to Chapter 94 state:

> "For the purposes of this Chapter, the term "furniture" means:
>
> (A) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category." (*Emphasis in original*.)

NY 881909 classified the articles in subheading 9403.20.0030, HTSUS, as other metal furniture. The ENs to heading 9403 state:

> This heading covers furniture and parts thereof, not covered by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoires, book-cases, and other shelved furniture, etc.), and also furniture for special uses.
>
> The heading includes furnitures for:
>
> (1) Private dwellings, hotels, etc., such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).
>
> (2) Offices, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.

* * * * * * *

However, the ENs further state:

> The heading does not include:
> (d) Waste-paper baskets (of plastics, heading 39.26; of basket or wickerwork, heading 46.02; of base metal, headings 73.26, 74.19, etc.).

All the various objects cited as examples of furniture covered by heading 9403 which are used to contain or store other articles have as a characteristic that they are designed to preserve or protect the contained article for future use (cabinets, linen chests, tallboys, clothes lockers, filing cabinets, etc.). Pedestal ashtrays, mentioned in the EN, are usually "hour-glass" shaped, crafted with refined detail and flowing decorative lines to accessorize rooms of offices and fall into a class entirely unlike the large, stark cylinder ashtrays being classified.

According to the language of the HTSUS, furniture articles are intended "to equip" something. The *Random House Dictionary of the English Language*, (1973) defines the word "equip" as meaning: "To furnish or provide with whatever is needed for service or for any undertaking." Waste receptacles cannot be considered necessary for the functioning of an office, industry or building. We also note that the definition of furniture in Chapter 94 is not all-encompassing. By including the words "not included under other more specific headings" in the definition of furniture, the drafters of the ENs intended that Chapter 94 would not cover all "movable" articles constructed for placing on the floor. A more specific heading which better describes the article is preferable to the more general heading of furniture. One such more specific heading suggested by the ENs is 7326, HTSUS, which provides for waste-paper baskets.

Despite all the exemplars of articles considered to be furniture in the ENs, we do not find any whose use or function is comparable to the waste receptacles or cylinder ashtrays. The modern trend toward smoke-free buildings is forcing most ashtrays outside buildings where they would not be considered furniture. Those which remain inside function as waste receptacles since ash-producing products have been banned. Waste paper baskets, which are not designed to equip a building, office or room, but serve as temporary repositories of something no longer wanted or needed are specifically excluded from heading 9403, HTSUS

The waste receptacles fall within the exclusionary language of EN 94.03(d) on page 1703. That paragraph states: "The heading [covering furniture] does not include: * * * (d) Waste-paper baskets * * * of base metal, headings 73.26, 74.19, etc.)." While the Note specifically refers to heading 7326, HTSUS, through the use of "etc." it indicates that similar articles of other headings are likewise excluded from heading 9403.

We note that the ENs to heading 73.23, HTSUS, which covers table, kitchen or other household articles and parts thereof, states that it comprises a wide range of iron or steel articles used for table, kitchen or other household purposes and that it includes the same goods for use in hotels, restaurants, boarding-houses, hospitals, canteens, barracks, etc. Among goods specifically included in this heading are dustbins and ash-trays. According to the *Random House Dictionary of the English Language*, (1973), the term "dustbin" is chiefly a British term for an ash can or garbage can. In HQ 950644, issued December 27, 1991, Customs stated, "Recognizing that the English used in the EN's is British English, we believe the term dustbin therein is synonymous with the American terms trash can, refuse can, garbage can, and cart, as herein applicable." Thus, we safely state that steel waste receptacles are included within the scope of heading 7323, HTSUS.

The goods being classified are intended to be used to collect trash, litter and waste in public areas of buildings. This use is nothing more than an extension of a housekeeping function. Indeed, the personnel who empty such articles are frequently referred to as the "Housekeeping Staff." Accordingly, in view of the inclusion of both dustbins and ash-trays in heading 7323, HTSUS, we believe the subject waste receptacles and cylinder ashtrays are properly classified in this heading. Heading 7323, HTSUS, being descriptive of the articles and more specific is preferable than heading 7326, HTSUS. See HQ 962658, dated July 18, 2000, for a similar ruling.

Holding:

Floor standing steel ashtray cylinders and waste receptacles are classified in either subheading 7323.93.0080, HTSUS, or subheading 7323.99.9060, HTSUS, depending on the exterior surface of the article.

NY 881909, dated January 25, 1993, is modified in accordance with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OR MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE APPLICABILITY OF SUBHEADING 9802.00.50 TO CERTAIN ARTICLES DECORATED ABROAD

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation or modification of ruling letters and treatment relating to the eligibility of certain articles which are exported for decorating operations and returned for a partial or complete duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling letter and revoke four ruling letters pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles which are exported for decorating operations and returned to the U.S. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited concerning the correctness of the intended action.

DATE: Comments must be received on or before September 8, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations & Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification & Marking Branch, (202) 927–1116.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993), this notice advises interested parties that Customs intends to revoke or modify rulings (as applicable) pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles which are decorated abroad and returned. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HRL) 071770 dated February 24, 1984, HRL 555510 dated January 30, 1990, HRL 557770 dated February 24, 1994, HRL 558935 dated January 31, 1995, and HRL 560168 dated February 28, 1997, this notice covers any rulings involving substantially identical transactions which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) relating to transactions which are substantially identical to those subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States

after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country), Customs Regulations (19 CFR 181.64 and 10.8), are satisfied.

In HRL 071770, Customs determined that U.S.-origin "basic color" carpet tiles which are exported to Canada for dyeing in a selected design and color are ineligible for tariff treatment under item 806.20, Tariff Schedules of the United States (TSUS) (the precursor provision to subheading 9802.00.50, HTSUS), when returned to the U.S. Customs held that the foreign dyeing operation exceeded the scope of a repair or alteration under item 806.20, TSUS. HRL 555510, which was issued in response to a request for reconsideration of HRL 071770, affirmed the holding in HRL 071770. In HRLs 071770 and 557770, Customs held that solid color plastic imitation fingernails of U.S. origin which are exported for painting with decorative designs are ineligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S.

Similarly, HRL 558935 held that previously-imported lace which was exported for a "reembroidery" process, described as the attachment of rope (thick thread), sequins, or beads (or any combination thereof) to the lace, was ineligible for entry under subheading 9802.00.50, HTSUS, upon its return. The same conclusion was reached in HRL 560168 which involved blank dinnerware which was exported for a decorating process, consisting of the application of decorative decals and, in some cases, painted bands, followed by kiln firing. Customs found that the foreign decorating process exceeded the scope of a repair or alteration under subheading 9802.00.50, HTSUS.

Customs has reconsidered the above five rulings and determined that they are incorrect in holding that classification under subheading 9802.00.50, HTSUS, is inapplicable to the returned decorated articles. It is now Customs position that, in regard to the specific factual situations involved in these rulings, the foreign decorating operations qualify as acceptable alterations under this tariff provision. HRLs 071770, 555510, 557770, 558935 and 560168 are set forth as Attachments A-E to this document, respectively. Proposed HRL 561782 revoking HRLs 071770 and 555510 is set forth as Attachment F to this document, proposed HRL 561783 revoking HRL 557770 is set forth as Attachment G to this document, proposed HRL 561781 modifying HRL 558935 is set forth as Attachment H to this document, and proposed HRL 561770 revoking HRL 560168 is set forth as Attachment I to this document.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify or revoke (as applicable) HRLs 071770, 555510, 557770, 558935 and 560168 and any other rulings not specifically identified to reflect the proper classification of the merchandise under subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in proposed HRLs 561782, 561783, 561781, and 561770. Additionally, pursuant to

19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 24, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 24, 1984.

CLA-2 CO:R:CV:V
071770 EM

MR. T. A. SCHOFIELD
A. N. DERINGER, INC.
RD #1 - Box W - 432
Alexandria Bay, NY 13607-9798

DEAR MR. SCHOFIELD:

In your letter of December 15, 1983, on behalf of Milliken Industries of Canada Ltd., you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain fusion-bonded carpet tiles that are proposed to be exported to Canada in 18 in. sq. sizes for a dyeing process and returned to the United States.

Sample swatches of processed and unprocessed pile carpet tiles were submitted. The machine-dyeing process that takes place in Canada is described in terms of first making printed designs in basic colors on the pile face of the tiles, followed by dyeing, staining, washing, and finally drying. The carpet tiles are then stocked awaiting return shipment for sale in the United States.

Under item 806.20, TSUS, articles exported for repairs or alterations may be returned to the United States with duty only on the value of the repairs or alterations made. In this regard, it has generally been held, by judicial precedent, that a foreign process that constitutes either an intermediate or finishing step in the preparation of finished goods cannot be characterized as an alteration under the tariff provision. Only repairs and alterations performed abroad on completed goods qualify under the statute. The cumulative steps described amount to a continuation of the manufacture of the carpet tiles.

Accordingly, since the process of producing a finished product from an unfinished one is beyond the terms of an alteration, the application of item 806.20, TSUS, is precluded in the described circumstances.

With respect to classification, fusion-bonded carpet tiles, with nylon cut pile yarns, are classifiable under the provision for floor coverings, not specially provided for, of textile materials, in item 361.56, TSUS, with duty at the rate of 6.9 percent ad valorem.

HARVEY B. FOX,
Director,
Classification and Value Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 30, 1990.

CLA-2 CO:R:C:V 555510 KAC
Category: Classification
Tariff No. 9802.00.50 (806.20)

MR. T.A. SCHOFIELD
A.N. DERINGER, INC.
R.D. #1 – Box W–432
Alexandria Bay, NY 13607–9798

Re: Request for Reconsideration of Customs Ruling Letter 071770 Dated February 24, 1984.

DEAR MR. SCHOFIELD:

This is in response to your letter dated October 18, 1989, on behalf of your client, Milliken Industries of Canada Limited, requesting reconsideration of Headquarters Ruling Letter 071770 dated February 24, 1984. That ruling denied eligibility under item 806.20, Tariff Schedules of the United States (TSUS) (now subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS)), to carpet tiles sent to Canada for dyeing operations and then imported into the U.S. Enclosed with your letter were the 1988/1989 Milliken Pattern Listing pamphlet and letters dated July 31, and August 23, 1989, from your client. Samples previously submitted with your 1984 request were examined.

Facts:

Milliken Industries manufactures carpet tiles at its plant in LaGrange, Georgia. The basic color carpet tiles are shipped to the Milliken plant in Deseronto, Ontario, Canada, where they are unpacked and run through a machine which applies a dye to the carpet tile in a selected design and color. The dyed carpet tile is then washed, dryed and repackaged for shipment to the U.S.

In Headquarters Ruling Letter 071770 of February 24, 1984, we held that the carpet tile imported into the U.S. after the dyeing and washing operations in Canada was not eligible for the partial duty exemption in item 806.20, TSUS. We determined that the dyeing and washing operations constituted a continuation of the manufacture of the carpet tiles.

Your client's letters ask that we consider the fact that the carpet tile exported to Canada and the dyed tile imported into the U.S. are both finished products. In support of this contention, the P 3000 and P 3020 carpet tiles are cited as an example. The P 3000 basic carpet tile is exported to Canada for processing into the P 3020 dyed carpet tile. As evidenced by the 1988/1989 Milliken Pattern Listing pamphlet, both carpet tiles are marketed and sold to the consumer as separate products. In sum, it is alleged that since the P 3000 carpet tile is a finished product before it is shipped to Canada, the operations performed on the carpet tile merely alter it to the P 3020 carpet tile product.

Issue:

Whether the operations performed on the U.S. carpet tiles in Canada will entitle the merchandise to the partial duty exemption in subheading 9802.00.50, HTSUS, when returned to the U.S.

Law and Analysis:

Headquarters Ruling Letter 071770 stated that "it has generally been held, by judicial precedent, that a foreign process that constitutes either an intermediate or finishing step in the preparation of finished goods cannot be characterized as an alteration under the tariff provision." The above referenced judicial precedent refers to, among others, *Dolliff & Company, Inc. v. United States*, 81 Cust.Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979). The court in *Dolliff* found that the processing steps (heat– setting, chemical-scouring, dyeing and a second heat-setting) performed on exported greige goods were all necessarily undertaken to initially produce the finished curtain fabric and did not comprise alterations under item 806.20, TSUS. In reaching its decision, the court distinguished *Amity Fabrics, Inc. v. United States*, 43 Cust.Ct 64, C.D. 2104, 305 F.Supp 4 (1959), by stating that dyeing and other processing steps are all necessarily undertaken to initially produce the finished fabric and, thus, a result different from *Amity*

must be reached. In *Amity*, velveteen fabric had been dyed a particular color and placed on sale in the U.S. The color proved to be unpopular and, as a result, the fabric was exported to Italy, dyed black, and then imported back into the U.S. and placed on sale. The court held that the dyeing of the fabric comprised an alteration of an already finished fabric to place it in a more marketable condition without either destroying its identity or creating a new article.

We have previously held that articles that were silk screened, hand-painted or printed abroad and returned to the U.S., were not eligible for item 806.20, TSUS, treatment because the operations performed were more than a mere alteration. *See*, Headquarters Ruling Letter 555021 dated July 1, 1988, which held that socks with a design resulting from a silk screening process are different from socks without such a design, and, as such, the foreign silk screening process has created a different article of commerce. Furthermore, the silk screening process constituted a finishing step in the manufacture of the socks. *See also*, Headquarters Ruling Letters 555363 dated August 25, 1989, and 554371 dated December 10, 1986.

With regard to the facts you have provided and based on our previous rulings, we are of the opinion that the foreign dyeing operation constitutes an operation that exceeds an alteration. The operations performed on the P 3000 carpet tile to manufacture it into a P 3020 carpet tile entail a process of dyeing and washing. The Canadian operations, therefore, fall within the framework of the *Dolliff* case as the dyeing and washing operations are processing steps necessary to produce a finished product, the P 3020 carpet tile. The *Amity* case does not apply to the instant case. In *Amity*, the unsalable fabric was sent to be re-dyed to make the already finished fabric salable. In this case, the carpet tile sent to Canada is not considered finished because the dyeing operations constitute a final step in the production of the patterned tile. The foreign dyeing process imparts new and different characteristics to the tile, resulting in a different article with specialized appeal to the consumer. Therefore, the carpet tile is analogous to the socks in Headquarters Ruling Letter 555021 in that the foreign dyeing operation constitutes a finishing step in the preparation of the dyed carpet tile, which is a different article from that which was exported.

Holding:

On reconsideration of the described operations performed in Canada, as well as the samples and other evidence submitted, we find that the dyeing and washing operations performed on the carpet tile constitute finishing operations and not alterations. Accordingly, the carpet tile imported into the U.S. is not eligible for the partial duty exemption in subheading 9802.00.50, HTSUS.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 24, 1994.

CLA–2 CO:R:C:S 557770 WAS
Category: Classification
Tariff No. 9801.00.10 and 9802.00.50

MR. THOMAS O. POWERS
4180 Huanui Street
Honolulu, HI 96816

Re: Eligibility of plastic fake fingernails for the partial duty exemption under subheading 9802.00.50; 554371; 555021.

DEAR MR. POWERS:

This is in response to your letter dated November 29, 1993, concerning the applicability of the partial duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to painted plastic fake fingernails from Indonesia.

Facts:

You state that the plastic imitation fingernails are produced in the U.S. by Allied Mold & Die Corp., California. The nails are available in assorted solid colors and are sold in sets of 24. You state that you purchase the nails for approximately two cents per nail. The nails are sent to Puri Mas Art Gallery, Indonesia, where they are painted with decorative designs. The cost of the painting is approximately two cents per nail. You also state that the importer provides the assorted paints and other supplies, which are purchased in the U.S. The decorated nails are then returned to the U.S., where they are packaged and then sold as a decorative, wearable accessory.

Issue:

Whether the U.S.-origin plastic fake fingernails which are painted with decorative designs in Indonesia are entitled to the partial duty exemption under subheading 9802.00.50, HTSUS, when returned to the U.S.

Law and Analysis:

Articles returned to the U.S. after having been exported to be advanced in value or improved in condition by repairs or alterations may qualify for the partial duty exemption under subheading 9802.00.50, HTSUS, provided the foreign operation does not destroy the identity of the exported articles or create new or different articles through a process of manufacture. However, entitlement to this tariff treatment is precluded where the exported articles are incomplete for their intended use prior to the foreign processing, *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982), or where the foreign operation constitutes an intermediate processing operation, which is performed as a matter of course in the preparation or the manufacture of finished articles. *Dolliff & Company, Inc. v. United States*, C.D. 4755, 81 Cust. Ct. 1, 455 F. Supp. 618 (1978), *aff'd*, C.A.D. 1225, 66 CCPA 77, 599 F.2d 1015 (1979). Articles entitled to this partial duty exemption are dutiable only upon the cost or value of the foreign repairs or alterations when returned to the U.S., provided the documentary requirements of 19 CFR 10.8 are satisfied.

In HRL 554371 dated December 10, 1986, we held that the process of hand-painting sweatshirts abroad is not considered a proper repair or alteration under item 806.20, Tariff Schedules of the United States (TSUS) [the precursor to subheading 9802.00.50, HTSUS]. In HRL 554371, we held that the hand-painting operations constituted a finishing of the garment performed in the course of manufacture—the last step in the total process of producing hand-painted sweatshirts. We further noted that, depending upon customer needs, the garments were not considered finished until they had undergone the final design painting and had become ready for marketing and sale.

In another case, we held that silk screening U.S.-origin socks in Taiwan constituted an operation that exceeded an alteration. *See* HRL 555021 dated July 1, 1988. In HRL 555021, we stated that although the garments can be worn whether a design is imprinted by silk screening or not, silk screening, like printing and hand-painting, is considered neither a repair nor an alteration under the provisions of item 806.20, TSUS. We further stated in HRL 555021 that socks which have a design as a result of a silk screening process are different from socks without such a design, and, as such, the foreign silk screening process has created a new and different article of commerce.

We believe that our holdings in the above-described rulings are controlling with respect to the applicability of subheading 9802.00.50, HTSUS, to the plastic fingernails under consideration in the instant case. We believe that the foreign decorative painting constitutes an operation that exceeds an alteration under subheading 9802.00.50, HTSUS. The design painting operations to be performed in Indonesia on the exported fingernails clearly will impart substantially new and different characteristics to the fingernails. Although the plastic nails may be worn whether a design is painted or not, as in the printing and silk screening operations described in the above cases, the application of a particular design on the fingernails gives them a unique and specialized appeal, and is a prerequisite to marketing and selling these fingernails in the U.S. Thus, we view the exported fingernails as incomplete for their intended use and the foreign painting operations as a necessary step in the production of the final article—decorative painted fingernails.

Holding:

On the basis of the information submitted, it is our opinion that the foreign painting operations are not considered proper alterations within the meaning of subheading 9802.00.50, HTSUS. Therefore, upon return to the U.S., the painted plastic fingernails will

not be entitled to the partial duty exemption available under this tariff provision, but will be dutiable upon their full value.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 31, 1995.

CLA–2–05 CO:R:C:S 558935 DEC
Category: Classification
Tariff No. 9802.00.50

MR. ANDREW P. VANE
BANES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Embroidery; Alteration; Reembroidery; HRL 078245; HTSUS 5810.92.0080; HTSUS 6002.20.1000; Textile quota category 229.

DEAR MR. VANE:

This is in response to your letter dated July 26, 1994, on behalf of Asiawealth Apparel Incorporated (Asiawealth), requesting a ruling concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to "reembroidered" lace. Samples of the lace before and after the embroidery operation were submitted for examination.

Facts:

The lace is made in France and third parties, not related to Asiawealth, import it into the United States. These third parties hire Asiawealth to contract with a Philippine factory to have "rope" (thick thread), or sequins, or beads, or any combination of rope, sequins, and beads, hand embroidered onto the lace. This process is called "reembroidery." The owners of the lace have the fabric "reembroidered" in order to make it more marketable, but maintain that the lace is a totally finished product without the "reembroidery" process and that both the lace and the "reembroidered" lace are sold in the same channels of trade and both are used as ornaments on women's wearing apparel. Asiawealth supplies the rope, sequins, and beads to the Philippine factory where the hand embroidery is performed. The "reembroidered" lace is then exported to the United States and entered under either Harmonized Tariff Schedule of the United States (HTSUS) 5804.21.00 or HTSUS 5804.29.00.

Issue:

1. Whether the "reembroidery" operation described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.
2. What is the proper tariff classification of the unembroidered and "reembroidered" lace?

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides for the assessment of duty on the value of repairs or alterations performed on articles returned to the United States after having been exported for that purpose. However, the application of this tariff provision is precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. *See, A.F. Burstrom v. United States,* 44 CCPA 27, C.A.D. 631 (1956), *aff'd,* C.D. 1752, 36 Cust.Ct. 46 (1956); *Guardian Industries Corporation v. United States,* 3 CIT 9 (1982). Subheading 9802.00.50, HTSUS, treatment is also precluded where the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture

of finished articles. *Dolliff & Company, Inc. v. United States*, 81 Cust.Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979).

We have previously held in Headquarters Ruling Letter (HRL) 078245, dated June 17, 1986, that embroidery of U.S. manufactured cotton sheets in China does not constitute a repair or alteration under item 806.20, Tariff Schedules of the United States (TSUS) (the precursor provision to subheading 9802.00.50, HTSUS). In addition, Customs has issued ORR Ruling 75–0151, dated May 10, 1976, and ORR Ruling 76–0029, dated May 26, 1976. Both of these ruling held that embroidering fabric was beyond the meaning of an alteration.

In addition, Customs has also found that U.S. articles subjected to silk screening, hand-painting, and printing operations abroad and then returned to the United States, were not eligible for subheading 9802.00.50, HTSUS, treatment because these operations are more than an alteration. We stated that the silk screening, hand-painting and printing operations created a different article of commerce with unique, specialized appeal and constituted a finishing step in the manufacture of the articles. *See*, HRL 555021, dated July 1, 1988 (silk screening of U.S. socks is not considered an alteration pursuant to this tariff provision); HRL 555249, dated June 16, 1989 (silk screening and chenilling designs on sweatshirts abroad exceeds an alteration); and HRL 554371, dated December 10, 1986 (hand-painting a design onto sweatshirts abroad exceeds an alteration).

With regard to the facts you have provided and based on the above rulings, we are of the opinion that the foreign "reembroidery" operation constitutes an operation that exceeds an alteration. Although the lace may be used as ornament to woman's apparel whether it has an embroidered design or not, embroidery like printing, silk screening and hand-painting, is considered neither a repair nor an alteration under the provisions of subheading 9802.00.50, HTSUS. A review of the samples submitted reveals that the "reembroidering" process substantially changes the appearance of the lace by imparting significant new characteristics to the lace.

You cite HRL 088565, dated May 23, 1991, in support of your argument that "reembroidery" is not more than an alteration because it does not result in a substantial transformation. This ruling letter addressed the country of origin of a textile product. It does not address the 9802.00.50, HTSUS, issue of whether "reembroidery" is an alteration. It is inappropriate to apply the analysis of HRL 088565 to the facts this case presents. With respect to HRL 557144, dated May 19, 1993 (embossing furniture fabric qualifies as an alteration under subheading 9802.00.80, HTSUS), which you cite in your letter, we believe that the facts in the rulings cited above are closer to the facts presented in this case. Unlike the embossing furniture fabric case where Customs held that the processing did not substantially change the quality or character of the merchandise, we find that the "reembroidering" of the lace imparts significant and unique characteristics that exceed an "alteration."

In addition to your contention that the subject merchandise is eligible for classification in subheading 9802.00.50, HTSUS, you claim that for purposes of determining the duty rate to be applied, the reembroidered lace should be classifiable as a true lace under either subheading 5804.21.0000 or 5804.29.0090, HTSUS, depending on the fiber content. We disagree.

Heading 5810, HTSUS, provides for, *inter alia*, embroidery in the piece. The Explanatory Notes (EN) to heading 5810, at page 808, define embroidery as that which is "obtained by working with embroidery threads on a pre-existing ground of * * * knitted or crocheted fabric, lace * * * ." An examination of the subject fabric reveals that the ground material is made of multifilament man-made fiber yarn, of a raschel warp knit construction. As the subject merchandise consists of embroidery thread worked onto a pre-existing ground of knitted fabric, classification is proper within heading 5810, HTSUS. Specifically, the subject fabric is classifiable within subheading 5810.92.0080, HTSUS, which provides for, "[E]mbroidery in the piece, in strips or in motifs: other embroidery: of man-made fibers * * * other * * *," dutiable at a rate of 16 percent *ad valorem*. The applicable textile quota category is 229.

The subject fabric, in its unembroidered state, is precluded from classification within heading 5804, HTSUS. The EN to heading 5804, HTSUS, at page 800, specifically exclude "openwork products of any kind produced by knitting by hand or machine **(Chapter 60)**" from this heading. As stated *supra*, the subject fabric is a raschel warp knit and therefore classification is precluded from heading 5804, HTSUS. The subject fabric, in its unembroidered state, is classifiable under subheading 6002.20.1000, HTSUS, which provides

for, "[O]ther knitted or crocheted fabrics: other, of a width not exceeding 30 cm: open-work fabrics, warp knit * * *," dutiable at a rate of 16 percent *ad valorem*. The applicable textile quota category is 229.

Holding:

On the basis of the information and samples submitted, the foreign "reembroidery" operations are not considered to be alterations. Therefore, tariff treatment of the returned goods under subheading 9802.00.50, HTSUS, is precluded.

The "reembroidered" fabric is classifiable within subheading 5810.92.0080, HTSUS, and the fabric in its unembroidered state is classifiable under subheading 6002.20.1000, HTSUS.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer.

SANDRA GEHTERS,
(for John Durant, Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 28, 1997.

CLA-2-05 RR:TC:SM 560168 DEC
Category: Classification
Tariff No. 9802.00.50

MR. DOUGLAS DAVIDSON
JOLIETTE PORCELAIN, INCORPORATED
516 rue Cartier
Joliette, Quebec J6E 4T7

Re: Alteration; ceramic dinnerware; HRL 557770; HRL 554371; HRL 555021.

DEAR MR. DAVIDSON:

This is in response to your letters dated October 18 and October 30, 1996, requesting a ruling concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to the decoration of ceramic dinnerware. Samples of the dinnerware before and after the decorating process were submitted for examination.

Facts:

Joliette Porcelain, Incorporated (Joliette), currently exports blank dinnerware products from the U.S. to Canada where ceramic decals, and in some cases painting bands will be applied to the articles in Canada. After the decorating process, the dinnerware will be kiln fired and returned to the U.S. You state that undecorated dinnerware, which is produced by the Pfaltzgraf Company, is currently being sold in the U.S. marketplace. The decorating processes may include an over-the-glaze application of decals and/or painted bands. In addition, the processes may also include direct printing, tampographie, or spray decoration.

Issue:

Whether the "decorating" operation described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Articles returned to the U.S. after having been exported to be advanced in value or improved in condition by repairs or alterations may qualify for the partial duty exemption under subheading 9802.00.50, HTSUS, provided the foreign operation does not destroy the identity of the exported articles or create new or different articles through a process of manufacture. However, entitlement to this tariff treatment is precluded where the ex-

ported articles are incomplete for their intended use prior to the foreign processing, *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982), or where the foreign operation constitutes an intermediate processing operation, which is performed as a matter of course in the preparation or the manufacture of finished articles. *Dolliff & Company, Inc. v. United States*, C.D. 4755, 81 Cust. Ct. 1, 455 F. Supp. 618 (1978), *aff'd*, C.A.D. 1225, 66 CCPA 77, 599 F.2d 1015 (1979). Articles returned from Canada which are entitled to this partial duty exemption are dutiable only upon the cost or value of the foreign repairs or alterations when returned to the U.S., provided the documentary requirements of 19 C.F.R. §181.64 are satisfied.

In Headquarters Ruling Letter (HRL) 557770, dated February 24, 1994, we held that plastic fingernails, which were sold as a wearable accessory, produced in the U.S. and then sent abroad to be painted with decorative designs were not entitled to classification under subheading 9802.00.50, HTSUS. We stated that the foreign decorative painting constituted an operation that exceeds an alteration under subheading 9802.00.50, HTSUS. The design painting operations imparted substantially new and different characteristics to the fingernails. Although the plastic nails may be worn whether a design is painted or not, the application of a particular design on the fingernails gives them a unique and specialized appeal, and is a prerequisite to marketing and selling these fingernails in the U.S. Thus, we viewed the exported fingernails as incomplete for their intended use and the foreign painting operations as a necessary step in the production of the final article—decorative painted fingernails.

In HRL 554371, dated December 10, 1986, we held that the process of hand-painting sweatshirts abroad is not considered a proper repair or alteration under item 806.20, Tariff Schedules of the United States (TSUS) [the precursor to subheading 9802.00.50, HTSUS]. In HRL 554371, we held that the hand-painting operations constituted a finishing of the garment performed in the course of manufacture—the last step in the total process of producing hand-painted sweatshirts. We further noted that, depending upon customer needs, the garments were not considered finished until they had undergone the final design painting and had become ready for marketing and sale.

In another case, we held that silk screening U.S.-origin socks in Taiwan constituted an operation that exceeded an alteration. *See* HRL 555021 dated July 1, 1988. In HRL 555021, we stated that although the garments can be worn whether a design is imprinted by silk screening or not, silk screening, like printing and hand-painting, is considered neither a repair nor an alteration under the provisions of item 806.20, TSUS. We further stated in HRL 555021 that socks which have a design as a result of a silk screening process are different from socks without such a design, and, as such, the foreign silk screening process has created a new and different article of commerce.

We believe that our holdings in the above-described rulings are controlling with respect to the applicability of subheading 9802.00.50, HTSUS, to the various decorated dinnerware articles to be imported by Joliette. The application of ceramic decals or painting bands on blank dinnerware products, followed by kiln firing, the use of an over-the-glaze process to apply decals and/or painted bands, direct printing, tampographie, or spray decoration on blank dinnerware products which produce results similar to the samples submitted with your ruling request constitute operations that exceed an alteration under subheading 9802.00.50, HTSUS. The design painting operations to be performed in Canada on the exported blank dinnerware clearly will impart substantially new and different characteristics to the dinnerware. Although the dinnerware may be used whether a design is applied to it or not, as in the printing and silk screening operations described in the above cases, the application of a particular design on the dinnerware gives them a unique and specialized appeal, and is a prerequisite to marketing and selling these dinnerware items in the U.S. Thus, we view the exported dinnerware as incomplete for its intended use and the foreign painting operations as a necessary step in the production of the final article—decorative dinnerware.

Holding:

On the basis of the information submitted, it is our opinion that the foreign decoration processes are not considered proper alterations within the meaning of subheading 9802.00.50, HTSUS. Therefore, upon return to the U.S., the decorated dinnerware as described above will not be entitled to the partial duty exemption available under this tariff provision, but will be dutiable upon their full value.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:SM 561782 CW
Category: Classification
Tariff No. 9802.00.50

MR. T.A. SCHOFIELD
A.N. DERINGER, INC.
R.D. #1 - Box W–432
Alexandria Bay, NY 13607–9798

Re: Revocation of HRLs 071770 and 555510; dyeing of carpet tiles abroad; alteration; *Amity Fabrics*.

DEAR MR. SCHOFIELD:

This is in reference to Headquarters Ruling Letter (HRL) 071770 dated February 24, 1984, and HRL 555510 dated January 30, 1990, which were issued to you on behalf of Milliken Industries of Canada Ltd. concerning the eligibility of carpet tiles which are dyed in Canada and returned to the U.S. for a partial duty exemption under item 806.20, Tariff Schedules of the United States (TSUS), and its successor provision, subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HRLs 071770 and 555510 and have determined that their conclusion that the returned dyed carpet tiles are ineligible for reduced duty treatment under item 806.20, TSUS, or subheading 9802.00.50, HTSUS, is incorrect. Therefore, HRLs 071770 and 555510 are revoked for the reasons set forth below.

Facts:

Milliken Industries manufactures carpet tiles at its plant in LaGrange, Georgia. The "basic color" carpet tiles are shipped to the Milliken plant in Deseronto, Ontario, Canada, where they are unpacked and run through a machine which applies a dye to the carpet tile in a selected design and color. The decorated carpet tile is then washed, dried and repackaged for shipment to the U.S. You state that the exported "basic color" carpet tiles are sold to consumers in that condition and, in support of that contention, you cite the P 3000 and P 3020 carpet tiles as examples. The P 3000 basic carpet tile is exported to Canada for processing into the P 3020 dyed carpet tile. As evidenced by the 1988/1989 Milliken Pattern Listing pamphlet, both carpet tiles are marketed and sold to consumers as separate products.

In HRL 071770, Customs determined that applying a dye to the carpet tiles in a selected design and color was an operation which exceeded the scope of a repair or alteration under item 806.20, TSUS. It was stated that only repairs or alterations performed abroad on completed goods qualify under the statute. Thus, Customs held that, as the foreign dyeing operation amounted to a continuation of the manufacture of the carpet tiles, the returned articles were ineligible for item 806.20, TSUS, treatment. HRL 555510, which reconsidered HRL 071770, similarly held that the dyeing operation constituted a finishing operation rather than a qualifying alteration under subheading 9802.00.50, HTSUS. Thus, HRL 555510 affirmed the holding in HRL 071770.

Issue:

Whether the operations performed on the U.S. carpet tiles in Canada qualify as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country), Customs Regulations (19 CFR 181.64 and 10.8), are satisfied.

Section 181.64(a), Customs Regulations, states that:

> 'repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In *Guardian Industries v. United States*, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in *Guardian Industries* was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

> * * * repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In *Royal Bead Novelty Co. v. United States*, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner

of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, CUSTOMS BULLETIN (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.'–origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

> * * * the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

In HRL 555744 dated January 28, 1991, Customs considered whether tipping, flagging and/or dyeing operations performed abroad on bunches of nylon bristles (for paint brushes) qualified as an alteration under subheading 9802.00.50, HTSUS. According to the facts in that ruling, the foreign processing consisted of tipping, which caused the ends of the bristles to become more pointed, or flagging, which caused the ends to split. Sometimes the bristles were also dyed. The ruling stated that the operations were performed on the bristles "ostensibly to give them the appearance of natural hog bristles so as to enhance their marketability." The facts also indicated that the bristles as exported from the U.S. were ready to be incorporated into finished paint brushes, and that both the "altered" and "unaltered" bristles were used in the manufacture of paint brushes.

Customs determined in HRL 555744 that the foreign processing constituted acceptable alterations. Specifically in regard to the dyeing of the bristles, we stated that this operation is distinguishable from the dyeing of the greige fabric involved in the *Dolliff* case because fabric in the greige is, by definition, unfinished merchandise requiring processing to render it suitable for its purpose, while the bristles in HRL 555744 were suitable for their intended use (incorporation into paint brushes) in their condition as exported and, in fact, were so used. Additionally, we stated that the dyeing did not affect the quality, texture, character or performance characteristics of the bristles.

Finally, HRL 561383 dated June 15, 1999, concerned whether certain imported Egyptian yarns, which are exported to Canada for dyeing, may receive subheading 9802.00.50, HTSUS, treatment when returned to the U.S. Information submitted by the requestor indicated that many customers use the same Egyptian yarns for knitting, weaving or sewing in their undyed condition, and that only in situations where the yarns are to be knit or woven to create patterned or jacquard fabrics is it necessary to dye the yarns to color first. Customs found that the dyeing operation was not an "intermediate processing operation

which is performed as a matter of course in the preparation or manufacture of finished" yarns. Further, we stated that the dyeing clearly does not destroy the identity of the exported yarns or create a new or different article of commerce. Thus, it was determined that the dyeing operation qualified as an alteration.

We believe that the holdings in HRLs 557161, 560325, 555744 and 561383 are controlling with respect to the facts in the instant case. "Basic color" carpet tiles are exported to Canada for dyeing in selected designs and colors. The facts submitted in the case indicated that both the carpet tiles in their condition as exported to Canada and the returned decorated tiles are marketed and sold to consumers as separate products for the same use. We view this as persuasive evidence that the "basic color" carpet tiles are complete for their intended use as floor coverings and that, therefore, the foreign dyeing/decorating operation is not a necessary step in the preparation or manufacture of finished tiles. Moreover, while the application of dyed designs and colors to the carpet tiles in Canada clearly imparts new decorative characteristics to the articles, this change in the appearance of the articles does not result in the loss of the goods' identity or the creation of new articles with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the tiles. Therefore, we find that the foreign processing operation performed on the carpet tiles in Canada constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the foreign dyeing operation, as described above, performed abroad on exported carpet tiles qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned decorated carpet tiles are entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 181.64 are met.

Consistent with this ruling, HRLs 071770 and 555510 are revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:SM 561783 CW
Category: Classification
Tariff No. 9802.00.50

MR. THOMAS O. POWERS
4180 Huanui Street
Honolulu, HI 96816

Re: Revocation of HRL 557770; painting decorative designs on imitation fingernails abroad; alteration.

DEAR MR. POWERS:

This is in reference to Headquarters Ruling Letter (HRL) 557770 dated February 24, 1994, which was issued to you concerning the applicability of the partial duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to painted plastic fingernails from Indonesia. We have reviewed this ruling and have determined that its conclusion that subheading 9802.00.50, HTSUS, is inapplicable to the returned decorated fingernails is incorrect. Therefore, HRL 557770 is revoked for the reasons set forth below.

Facts:

Plastic fingernails are produced in the U.S. by Allied Mold & Die Corp., California. The nails are available in assorted solid colors and are sold in sets of 24. You purchase the nails

for approximately two cents per nail and send them to Indonesia, where they are painted with decorative designs. The cost of the painting is approximately two cents per nail. The decorated nails are then returned to the U.S., where they are packaged and sold as a decorative, wearable accessory.

In HRL 557770, Customs held that the foreign decorative painting constitutes an operation which exceeds an alteration under subheading 9802.00.50, HTSUS. In support of this conclusion, Customs stated that the design painting imparts substantially new and different characteristics to the fingernails, that the fingernails as exported to Indonesia are incomplete for their intended use, and that the foreign processing is a necessary step in the production of the final article.

Issue:

Whether the U.S.-origin imitation fingernails which are painted with decorative designs in Indonesia are entitled to the partial duty exemption under subheading 9802.00.50, HTSUS, when returned to the U.S.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 10.8, Customs Regulations (19 CFR 10.8), are satisfied.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In *Guardian Industries v. United States*, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in *Guardian Industries* was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 FSupp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

> * * * repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since

there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In *Royal Bead Novelty Co. v. United States*, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, CUSTOMS BULLETIN (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

> * * * the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

We believe that the holdings in HRLs 557161 and 560325 are controlling with respect to the facts in the instant case. Plastic imitation fingernails produced and sold in the U.S. in assorted solid colors are exported to Indonesia where they are painted with decorative designs. Both the imitation fingernails in their condition as exported and the returned decorated fingernails are marketed to consumers for the same use. We view this as persuasive evidence that the fingernails as exported from the U.S. are complete for their intended use as decorative wearable accessories and, therefore, that the foreign design painting operation is not a necessary step in the preparation or manufacture of finished imitation fingernails. Moreover, while painting decorative designs on the solid-color fingernails clearly imparts new decorative characteristics to the product, this change in the appearance of the articles does not result in the loss of the goods' identify or the creation of a new article with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the fingernails. Therefore, we find that the foreign decorative design operation constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that painting decorative designs on U.S.-made solid color imitation fingernails in Indonesia qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned decoratively painted fingernails are entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 10.8 are met.

Consistent with the foregoing, HRL 557770 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2–05 RR:CR:SM 561781 CW
Category: Classification
Tariff No. 9802.00.50

MR. ANDREW P. VANCE
BARNES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Modification of HRL 558935; "reembroidery" of lace fabric; alteration.

DEAR MR. VANCE:

This is in reference to Headquarters Ruling Letter (HRL) 558935 dated January 31, 1995, which was issued to you on behalf of Asiawealth Apparel Inc., concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to "reembroidered" lace. The ruling also addressed the proper tariff classification of the lace products.

We have reviewed HRL 558935 and believe that the portion pertaining to the applicability of subheading 9802.00.50, HTSUS, to "reembroidered" lace is incorrect. It is this aspect of the ruling that we are modifying for the reasons set forth below. The portion of the ruling relating to the tariff classification of the lace products remains in effect.

Facts:

The lace is made in France and third parties, not related to Asiawealth, import it into the United States. These third parties hire Asiawealth to contract with a Philippine factory to have "rope" (thick thread), or sequins, or beads, or any combination of rope, sequins, and beads, hand embroidered onto the lace. This process is called "reembroidery." The owners of the lace have the fabric "reembroidered" in order to make it more marketable, but maintain that the lace is a totally finished product without the "reembroidery" process and that both the lace and the "reembroidered" lace are sold in the same channels of trade and both are used as ornaments on women's wearing apparel. Asiawealth supplies the rope, sequins, and beads to the Philippine factory where the hand embroidery is performed. The "reembroidered" lace is then exported to the United States.

In HRL 558935, Customs held that the returned "reembroidered" lace is ineligible for subheading 9802.00.50, HTSUS, treatment because:

> * * * the foreign "reembroidery" operation constitutes an operation that exceeds an alteration. Although the lace may be used to ornament woman's apparel whether it has an embroidered design or not, embroidery like printing, silk screening and hand-painting, is considered neither a repair nor an alteration under the provisions of subheading 9802.00.50, HTSUS. A review of the sample submitted reveals that the "reembroidery" process substantially changes the appearance of the lace by imparting significant new characteristics to the lace.

Issue:

Whether the "reembroidery" operation described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.

Law And Analysis:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 10.8, Customs Regulations (19 CFR 10.8), are satisfied.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In *Guardian Industries v. United States*, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in *Guardian Industries* was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

> * * * repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In *Royal Bead Novelty Co. v. United States*, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, CUSTOMS BULLETIN (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

> * * * the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

HRL 557659 dated January 27, 1994, concerned whether U.S.-origin Jacquard curtain fabric which is exported to Mexico for processing described as "air brushing and hot-wire cutting" qualifies for subheading 9802.00.50 treatment when returned to the U.S. During the air brushing operation, decorative motifs existing in the pattern of the fabric (such as flowers, leaves, etc.) are isolated by a stencil and paint is applied to them. This enhances the design, which is inherent in the fabric. Hot-wire cutting traces the contours of already existing decorative lines in the fabric to make the effect of the lines more dramatic. The record before Customs in the case indicated that 95% of the Jacquard curtain fabric was sold in the U.S. without the air brushing or hot-wire cutting operations.

Customs stated in HRL 557659 that the fact that the fabric in its exported condition is marketed as fabric for curtains, and is marketed for the same use after the air brushing and hot-wire cutting operations, shows that the fabric before the processing is suitable for its intended use and that it is exported in a completed condition. We further stated that, although the foreign operations slightly change the appearance of the fabric, they do not significantly change the quality, character or performance characteristics of the fabric. Accordingly, Customs found that the air brushing and hot-wire cutting constitute acceptable alterations under subheading 9802.00.50, HTSUS.

We believe that the holdings in HRLs 557161, 560325, and 557659 are controlling with respect to the facts in the instant case. Lace is exported for a "reembroidery" process, which involves hand embroidering various combinations of rope (thick thread), sequins and beads onto the lace. Information in the record indicates that both the lace in its condition as exported and the returned "reembroidered" lace are sold in the same channels of trade for use as ornamentation on women's wearing apparel. We view this as persuasive evidence that the lace in its exported condition is complete for its intended use as wearing apparel ornamentation and, therefore, that the foreign "reembroidery" operation is not a necessary step in the preparation or manufacture of finished lace. Moreover, while hand embroidering rope, sequins and/or beads onto the lace clearly imparts new decorative characteristics to the product, this change in the appearance of the article clearly does not result in the loss of the good's identity or the creation of a new article with a different

commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the lace. Therefore, we find that the foreign "reembroidery" operation constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the foreign "reembroidery" operation, as described above, performed abroad on exported lace qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned "reembroidered" lace is entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 10.8 are met.

HRL 558935 is modified consistent with the foregoing.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2–05 RR:CR:SM 561770 CW
Category: Classification
Tariff No. 9802.00.50

MR. DOUGLAS DAVIDSON
JOLIETTE PORCELAIN, INCORPORATED
516 rue Cartier
Joliette, Quebec J6E 4T7

Re: Revocation of HRL 560168; alteration; decoration of ceramic dinnerware.

DEAR MR. DAVIDSON:

This is in reference to Headquarters Ruling Letter (HRL) 560168 dated February 28, 1997, which was issued to you concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to the foreign decoration of certain ceramic dinnerware. We have reviewed this ruling and have determined that its conclusion that subheading 9802.00.50, HTSUS, is inapplicable to the returned dinnerware is incorrect. Therefore, HRL 560168 is revoked for the reasons set forth below.

Facts:

Joliette Porcelain, Incorporated (Joliette), exports blank dinnerware products from the U.S. to Canada where ceramic decals are applied and, in some cases, bands are painted onto the articles. After the decorating process, the dinnerware is kiln fired and then returned to the U.S. Alternatively, the dinnerware may be decorated by an "over-the-glaze" application of decals and/or painted bands. You state that the undecorated dinnerware, which is produced by the Pfaltzgraf Company, is sold in that condition in the U.S. marketplace.

Samples of the dinnerware before and after the decorating process were submitted for our examination.

In HRL 560168, Customs held that subjecting blank dinnerware to the above-described decorating processes in Canada, followed by kiln firing, constitute operations that exceed a repair or alteration under subheading 9802.00.50, HTSUS. Customs determined that the foreign processing imparted substantially new and different characteristics to the dinnerware. Customs found that the application of a particular design on the dinnerware items gave them a unique and specialized appeal, and was a prerequisite to marketing and selling the finished decorative dinnerware in the United States. Thus, Customs viewed the exported dinnerware as incomplete for its intended use and the foreign processing as a necessary step in the production of the final article—decorative dinnerware.

Issue:

Whether the decorating operations described above qualify as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country), Customs Regulations (19 CFR 181.64 and 10.8), are satisfied.

Section 181.64(a), Customs Regulations, states that:

> 'repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In *Guardian Industries v. United States*, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in *Guardian Industries* was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 FSupp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

> * * * repairs and alterations are made to completed articles and do not include intermediate processing operations which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In *Royal Bead Novelty Co. v. United States*, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner

of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, CUSTOMS BULLETIN (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

> * * * the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

We believe that the holdings in HRLs 560325 and 557161 are controlling with respect to facts presented in the instant case. Blank dinnerware is exported to Canada where ceramic decals or painted bands are applied, after which the articles are kiln fired and then returned to the U.S. The facts submitted in the case indicate that both the decorated and undecorated dinnerware are marketed to consumers for the same use. We view this as persuasive evidence that the dinnerware in its exported condition is complete for its intended use and, therefore, that the foreign processing is not a necessary step in the production or manufacture of finished articles. While the application of decals or painted bands to the dinnerware in Canada clearly imparts new decorative characteristics to the articles, this enhanced appearance does not result in the loss of the goods' identity or the creation of new articles with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the dinnerware. Therefore, we find that the decorative processing operations performed on the dinnerware in Canada qualifies as an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the decorating operations described above performed abroad on exported blank dinnerware constitute an alteration under subheading 9802.00.50, HTSUS. Therefore, the returned decorated dinnerware is entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 181.64 are met.

Consistent with this ruling, HRL 560168 is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF A RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A MAN'S JACKET AND A PAIR OF BIB-AND-BRACE OVERALLS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the tariff classification of a man's jacket and pair of bib-and-brace overalls.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of a man's jacket and pair of bib-and-brace overalls and revoking treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed modification was published in the CUSTOMS BULLETIN, of June 21, 2000, Vol. 34, No. 25. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 9, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are informed compliance and shared responsibility. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade communities responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling (NY) D81086, we held that the garments described in that ruling were not classifiable under heading 6210 of the Harmonized Tariff Schedule of the United States Annotated (HTSU-

SA) because the coating was not visible to the naked eye. We held that the jacket was classifiable as a water resistant jacket under subheading 6201.93.3000, HTSUSA, if it passed the test set forth in U.S. Note 2, Chapter 62, HTSUSA. If it did not pass the test, we held that it was classifiable as a jacket under subheading 6201.93.3511, HTSUSA. We held that the overalls were classifiable under subheading 6203.43.1500, HTSUSA, as water resistant garments, if they passed the test set forth in U.S. Note 2, Chapter 62, HTSUSA. If they did not pass the test, we held that they were classifiable under subheading 6203.43.2010, HTSUSA, as other men's bib-and-brace overalls.

Customs is modifying NY D81086 and any other ruling not specifically identified, in order to classify this merchandise under heading 6210. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

Headquarters Ruling (HQ) 962285, modifying NY D81086 is set forth as the "Attachment" to this document.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: July 25, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 25, 2000.

CLA–2 RR:CR:TE 962285 RH
Category: Classification
Tariff Nos. 6210.40.5020 and 6210.40.5040

MR. SCOTT D. NOE
TOWER GROUP INTERNATIONAL, INC.
821 2nd Avenue #1400
Seattle, WA 98104

Re: Request for reconsideration of NY D81086.

DEAR MR. NOE:

This is in reply to your letter of October 15, 1998, on behalf of Alliance Mercantile, requesting reconsideration New York Ruling Letter (NY) D81086, dated August 7, 1998, specifically, the classification of garments referenced as style number 3005. You do not contest the classification of the other garments in that ruling.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY D81086 was published on June 21, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 25. No comments were received.

Facts:

The two garments comprising style number 3005 are a man's jacket with a detachable hood and a pair of bib-and-brace overalls. When the hood is detached, it may serve as a carry bag for the jacket and overalls. Both the jacket and overalls are constructed of a woven 100% nylon fabric that has a polyurethane coating on the inner surface of the shell fabric.

In NY D81086, we held that the jacket was classifiable as a water resistant jacket under subheading 6201.93.3000, HTSUSA, if it passed the test set forth in U.S. Note 2, Chapter 62, HTSUSA. If it did not pass the test, we held that it was classifiable as a jacket under subheading 6201.93.3511, HTSUSA. We held that the overalls were classifiable under subheading 6203.43.1500, HTSUSA, as water resistant garments, if they passed the test set forth in U.S. Note 2, Chapter 62, HTSUSA. If they did not pass the test, we held that they were classifiable under subheading 6203.43.2010, as other men's bib-and-brace overalls.

You contend that the garments should be classified under heading 6210, HTSUSA.

Issue:

What is the correct classification of style 3005?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. Where goods cannot be classified on the basis of GRI 1, the remaining GRI will be applied in order.

Heading 6210, HTSUSA, provides for garments made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907. Heading 5903, HTSUSA, provides for textile fabrics impregnated, coated, covered, or laminated with plastics, other than tire cord fabrics. Note 2 to Chapter 59, HTSUSA, states that heading 5903 applies to:

> (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:
>
> (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;

In NY D81086, we held that the garments in question were not classifiable under heading 6210 because the coating was not visible to the naked eye.

As set forth above, the sole criterion upon which Customs is to determine whether fabric is coated for purposes of classification under heading 5903, HTSUSA, is clear and unambiguous: fabric is classifiable under heading 5903 if the plastic coating is visible to the naked eye. This office has established criterion by which Customs will deem coating visible to the

naked eye. In Headquarters Ruling Letters (HQ's) 083127, dated November 8, 1989, and 087668, dated January 9, 1991, this office noted that where coating served to "blur" or "obscure" a fabric's underlying weave, the fabric was deemed visibly coated for purposes of classification within heading 5903, HTSUSA.

As suggested in your letter, the Customs National Import Specialist for this commodity compared the uncoated outer surface of the garment with the coated inner surface. On the coated fabric, he observed that the weave pattern is not sharply defined; it "blurs" or "obscures" the fabric's underlying weave, thus rendering the polyethylene coating visible to the naked eye.

Note 5, Chapter 62, HTSUSA, provides that garments which are classifiable, *prima facie*, in both heading 6210, HTSUSA, and any other heading of that chapter (other than 6209), are to be classified in heading 6210. Accordingly, since the outer shells are coated (for tariff purposes), the samples are classifiable under heading 6210.

Holding:

NY D81086 is modified.

The jacket is classifiable in subheading 6210.40.5020, HTSUSA, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other men's or boys' garments: Of man-made fibers: Other: Anoraks (including ski-jackets), windbreakers and similar articles." It is dutiable at the general column one rate at 7.3 percent *ad valorem* and the textile category is 634.

The overalls are classifiable under subheading 6210.40.5040, HTSUSA, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other men's or boys' garments: Of man-made fibers: Other: Overalls and coveralls." They are dutiable at the general column one rate at 7.3 percent *ad valorem* and the textile category is 659.

The designated textile and apparel category may be subdivided into parts. If so visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN LCD PROJECTORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of two ruling letters, and treatment relating to tariff classification of certain projectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking two ruling letters pertaining to the tariff classification of certain projectors under the Harmonized Tariff Schedule of the United States ("HTSUS") and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on June 7, 2000. One comment was received which is discussed in the attached ruling HQ 964043.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 9, 2000.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on June 7, 2000, proposing to revoke two ruling letters pertaining to the

tariff classification of certain projectors. One comment was received from counsel for one of the original ruling requesters. That comment is discussed in HQ 964053, which is Attachment A to this document.

As stated in the proposed notice, these revocations will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY A81603, NY 802874, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964043 and HQ 964159. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964043, revoking NY A81603 and HQ 964159, revoking NY 802874, are set forth as Attachments A and B, respectively, to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: July 25, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 25, 2000.

CLA–2 RR:CR:GC 964043 GOB
Category: Classification
Tariff No. 8528.30.66

MR. SIDNEY N. WEISS
90 Park Avenue
New York, NY 10016

Re: LCD projector; NY A81603 revoked.

DEAR MR. WEISS:

This is with respect to New York Ruling Letter ("NY") A81603, issued to counsel by the Customs National Commodity Specialist Division, New York, on March 22, 1996, on behalf of Toshiba America Consumer Products, Inc. ("Toshiba"). In that ruling, an LCD projector equipped with a data source and a video source was classified under subheading 8471.60.30, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

In response to the Notice of Proposed Revocation of NY A81603 which was published in THE CUSTOMS BULLETIN on June 7, 2000, you submitted a comment dated July 6, 2000. In summary your claims are as follows. The LCD data projector's technology and specifications indicate that it is principally used as an ADP display, not as a TV or video monitor. The projector's applications indicate that it is principally used in group settings, not in individual recreational or home environments. Toshiba's marketing materials indicate that the projectors have been designed, marketed, and sold, and will continue to be marketed and sold, with the idea that computers are the primary input devices. The projectors are properly classifiable under subheading 8471.60.30, HTSUS, by reference to GRI 1 only, because they perform only one principal function—that of display. Customs has made the error that the projectors' different inputs somehow equal their functions or control. 97% of the projector's components are devoted to receiving and processing computer signals, and only about 3% of its components are devoted to receiving and processing video signals. The projectors' high cost effectively precludes them from home use by all but the most affluent Americans. Finally, you contend that Customs has ignored the Harmonized Commodity Description and Coding System Explanatory Notes in reaching its decision.

Customs response to your claims is discussed in the LAW AND ANALYSIS section of this ruling.

Facts:

The LCD projector was described as follows in NY A81603:

> The TLP–310 LCD Data Projector * * * utilizes three 1.3 inch polysilicon fine LCDs with a resolution of 644 by 484 pixels, which is very close to the VGA resolution of 640 by 480 pixels used in most IBM compatible computers. The TLP–310 LCD Data Projector is equipped with data and video inputs and outputs, and a RS–232 type serial port for attachment to a computer. The device is also equipped with a wireless remote, lens cap, power cord, AV (audio-video) cable, VGA (computer video) cable, and an Apple Macintosh computer adapter.
>
> The TLP–310 LCD Data Projector is capable of using different signal sources for the video to be projected, including VGA, VHS, and S-VHS (using NTSC, PAL, SECAM and NTSC 4.43 signals).

Issue:

Are the above-described LCD projectors provided for in heading 8471, HTSUS, as automatic data processing units, or in heading 8528, HTSUS, as video projectors?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1,

and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

Heading 8471 covers:

> Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included[.]

Heading 8528 covers:

> Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors[.]

Legal Note 3 to Section XVI, HTSUS, provides:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The EN to Legal Note 3 to Section XVI, HTSUS (EN (VI)), provides in pertinent part:

> Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3(c) * * *

Customs has reconsidered the uses of projectors and the evidentiary requirements of Legal Note 3 to Section XVI. The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the merchandise, and recognition in the trade of such use. See *U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F. 2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976). We note that in *Lenox Collections v. U.S.*, 19 CIT 345, 347 (1995) and *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992) the court applied the *Carborundum* factors to principal use. See also *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

In applying these factors to the merchandise, we note that the TLP–310 projector at issue has two functions. It may be connected to a computer for the projection of computer-generated data images. It may also be connected directly to video devices for the projection of video images. In general, such projectors may be used to project video from a growing array of sources, including VCRs, camcorders and laser discs, as is noted in the Toshiba marketing literature.

In the original ruling request it was stated that "[t]he TLP–310 LCD Data Projector will be sold primarily for use as a data projector" and that the "[p]rocessing and display of computer signals will be the principal function of the projector, and a larger percentage of the components of the TLP–310 are devoted to receiving and processing computer signals than video signals." In your comment to the proposed revocation, you state that the projectors have been designed, marketed and sold as primarily computer output devices. You claim that 97% of the projector's components are devoted to receiving and processing computer signals. However, no probative documentary evidence in support of these assertions was submitted, as we specifically requested in the proposed ruling revocation. The advertising narrative submitted lists the video capabilities ahead of the computer capabilities, and the specifications give no weight to any individual attribute over another.

You indicate that the projectors will be used in group settings, and are too expensive to be used in most home or recreational environments. This comment suggests that projectors are used in the same manner as ADP displays, that ADP units are principally used in group settings and that projectors are too expensive for home or recreational use. Without concrete evidence to support this notion, we are unable to give it much weight. We are aware that ADP display units are used in many environments, and for many purposes. Moreover,

more probative of the environment of use would be evidence of whether consumers use the goods more often to display video signals or ADP signals.

You factually misstate that the good at issue is used as a TV or video monitor. We note that the article is a projector. You claim that Customs is ignoring the Explanatory Notes in classifying the instant good. You cite the EN to heading 8471 as support for your claim, when in fact the EN's require that a separately presented ADP display must be capable only of accepting a signal from a central processing unit. Toshiba's projectors are more versatile. In any event, principal use or function is the legal standard that must be met. Alternatively, you claim that the principal function is display. Since both headings 8471 and 8528 include units which display, this claim is unhelpful.

Legal Note 3 to Section XVI does not resolve the classification at issue because the projectors are composite machines and satisfactory documentary evidence has not been submitted with respect to the principal function of the projectors. As a result, we are now of the view that the projectors cannot be classified based upon GRI 1. GRI 2 is not applicable here. GRI 3 provides as follows:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (VIII) for GRI 3(b) provides:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

At GRI 3(a), neither of the two competing headings provides a more specific description than the other. Pursuant to GRI 3(b), the projector is a composite good. There is no essential character to the projector because both functions are equally important. Accordingly, we proceed to GRI 3(c), i.e., the good shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), we determine that the projector is provided for in heading 8528, HTSUS. It is classified in subheading 8528.30.66, HTSUS as: "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm." In your comment on the proposed revocation, you state that Customs is equating the projectors' inputs with their function. Classification at GRI 3(c) is not an indication that the principal function of the video projector is video, but rather an indication that there is no principal function.

Our determination is consistent with a recent decision on similar merchandise published in the World Customs Organization ("WCO") *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of a projector which received signals from an automatic data processing machine and a video source and whose principal function could not be determined was based upon GRI 3(c). *See* Opinion No. 8528.30/1 of the WCO *Compendium of Classification Opinions*, Amending Supplement No. 24 (August 1999). As we stated in T.D. 89–80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, the they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

Holding:

The LCD projector is provided for in heading 8528, HTSUS, and is classified in subheading 8528.30.66, HTSUS, as "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Effect on Other Rulings:

NY A81603 is revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 25, 2000.

CLA–2 RR:CR:GC 964159 GOB
Category: Classification
Tariff No. 8528.30.66

GAIL T. CUMINS
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
75 Broad Street
26th Floor
New York, NY 10004

Re: LCD projectors; NY 802874 revoked.

DEAR MS. CUMINS:

This is with respect to New York Ruling Letter ("NY") 802874, issued to you by the Customs National Commodity Specialist Division, New York, on October 17, 1994, on behalf of Sanyo Fisher (USA) Corp. In that ruling, LCD projectors equipped with a data source and a video source were classified under subheading 8471.92.30, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The LCD projectors (model PLC–300M and model PLC–320M Multimedia Data-Grade LCD Video Projectors) were described as follows in NY 802874:

> The model PLC–300M employs three active matrix LCD panels, and a 640 pixel x 480 pixel multiple scanning system. This model is capable of generating computer video output in precise clear images ranging from 25 to 300 inches measured diagonally. The computer audio output is reproduced through an amplifier and speaker built into the projector's housing. The model PLC–300M connects directly to IBM VGA, EGA, or Macintosh II computer systems. This model is equipped with a remote control, and it also features connections for other video sources such as video cassette recorders, television tuners, and camcorders.
>
> The Model PLC–320M is a newer version of the Model PLC–300M. The primary difference between the two models is that the PLC–320M will have an even brighter display through the use of a brighter lamp, and improved LCD panels.

Issue:

Are the above-described LCD projectors provided for in heading 8471, HTSUS, as automatic data processing units, or in heading 8528, HTSUS, as video projectors?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined ac-

cording to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

Heading 8471 covers:

> Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included[.]

Heading 8528 covers:

> Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors[.]

Legal Note 3 to Section XVI, HTSUS, provides:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The EN to Legal Note 3 to Section XVI, HTSUS (EN (VI)), provides in pertinent part:

> Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3(c) * * *

Customs is reconsidering the uses of projectors and the evidentiary requirements of Legal Note 3 to Section XVI. The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the merchandise, and recognition in the trade of such use. See *U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F. 2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Lenox Collections v. U.S.*, 19 CIT 345, 347 (1995); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

The projectors at issue have two functions. They may be connected to a computer for the projection of computer-generated data images. They may also be connected directly to video devices for the projection of video images. In general, such projectors may be used to project video from a growing array of sources.

Legal Note 3 to Section XVI does not resolve the classification at issue because the projectors are composite machines and satisfactory documentary evidence has not been submitted with respect to the principal function of the projectors. As a result, we are now of the view that the projectors cannot be classified based upon GRI 1. GRI 2 is not applicable here. GRI 3 provides as follows:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

> (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (VIII) for GRI 3(b) provides:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

At GRI 3(a), neither of the two competing headings provides a more specific description than the other. Pursuant to GRI 3(b), the projectors are composite goods. There is no essential character for the projectors because both functions are equally important. Accordingly, we proceed to GRI 3(c), i.e., the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), we determine that the projectors are provided for in heading 8528, HTSUS. They are classified in subheading 8528.30.66, HTSUS as: "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Our determination is consistent with a recent decision on similar merchandise published in the World Customs Organization ("WCO") *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of a projector which received signals from an automatic data processing machine and a video source and whose principal function could not be determined was based upon GRI 3(c). *See* Opinion No. 8528.30/1 of the WCO *Compendium of Classification Opinions*, Amending Supplement No. 24 (August 1999). As we stated in T.D. 89–80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, the they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

Holding:

The LCD projectors are provided for in heading 8528, HTSUS, and are classified in subheading 8528.30.66, HTSUS as "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Effect on Other Rulings:

NY 802874 is revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER & TREATMENT RELATING TO TARIFF CLASSIFICATION OF A TREE STAKE KIT

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a tree stake kit.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a tree stake kit with wooden stakes and a polypropylene rope, and any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of June 21, 2000, Vol. 34, No. 25. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 9, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927–1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling (NY) F83565, dated March 13, 2000, concerning the tariff classification of a tree stake kit from China containing wooden stakes and a polypropylene rope, the product was erroneously classified under subheading 5607.49.1500 of the Harmonized Tariff Schedule of

the United States Annotated (HTSUSA) based on the premise that the polypropylene rope imparted the essential character to the tree stake kit. Since the HTSUSA does not provide for classification of a tree stake kit, it was correctly determined that the merchandise could not be classified pursuant to GRI 1 and analysis of the essential character of the tree stake kit was made under GRI 3(b). After consideration of the use, marketing, value breakdown and weight of the articles comprising the tree stake kit, Customs is reclassifying the tree stake kit based on a determination that the wooden stakes, impart the essential character to the kit rather than the polypropylene rope. The correct classification for the product should be under subheading 4421.90.9840 of the HTSUSA as an other article of wood.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY F83565, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Headquarter Ruling (HQ) 963840 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: July 21, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 21, 2000.

CLA-2 RR:CR:TE 963840 mbg
Category: Classification
Tariff No. 4421.90.9840

MS. LEILA HILLIER
UNITED GLOBAL SOURCING, INC.
269 Executive Drive
Troy, MI 48083-4504

Re: Reconsideration of NY F83565; Classification of a tree stake kit.

DEAR MS. HILLIER:

This is in response to your letter, dated March 16, 2000, wherein you request reconsideration of New York Ruling (NY) F83565, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a tree stake kit made in China. NY F83565, issued to Phoenix International which was acting on your behalf, classified the tree stake kit in subheading 5607.49.1500, HTSUSA, which provides for, *inter alia*, twine, rope and cordage of polypropylene. You requested that Customs reconsider this ruling as well as the applicability of heading 9817, HTSUSA, to your merchandise.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY F83565 was published on June 21, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 25. No comments were received.

Facts:

The merchandise submitted is a tree stake kit which is intended to provide support during the growth of a young tree. The kit is comprised of four separate components: three wooden conical stakes, each measuring approximately one foot in length, with a ridged top containing a drilled hole for inserting a metal eyelet and a tapered bottom; a piece of nonwoven fabric, approximately two and half inches in width and four feet in length; a 3 ply twisted rope made of polypropylene measuring approximately four millimeters in diameter; and three metal eye loops. All of the components are manufactured in China and packaged together for retail sale.

Issue:

What is the proper classification of the tree stake kit?

Law and Anaylsis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

For the subject merchandise at issue, consideration must be given to each component of the tree stake kit. The kit consists of a textile rope which is classifiable under the heading which provides for rope (heading 5607, HTSUSA); a wood component which is classifiable under the heading which describes other articles of wood (heading 4421, HTSUSA); a metal fastener component which is classifiable under the heading which describes other articles of iron and steel (heading 7326, HTSUSA); and also a textile fabric component which is classifiable as nonwoven fabric (heading 5603, HTSUSA).

GRI 3 provides, in pertinent part:

> When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by

reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

When interpreting and implementing the HTSUSA, the Explanatory Notes ("EN") to the *Harmonized Commodity Description and Coding System* may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The guidance of the ENs is helpful in the instant analysis.

GRI 3(a), states in pertinent part that "when two or more headings each refer * * * to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification shall be determined by Rule 3(b) or 3(c)." In this regard, EN Rule 3(b)(X), p.5, states in pertinent part that " 'goods put up in sets for retail sale' shall be taken to mean goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; consist of products or articles put up together to meet a particular need to carry out a specific activity; and are put up in a manner suitable for sale directly to users without repacking * * *."

The merchandise under consideration is such that the components are adapted to each other and are mutually complimentary in their intended function of supporting a tree. Furthermore, the components are used as a tree support only when used in conjunction with one another and would not be sold separately for such a purpose. Therefore, for classification purposes the components are considered to form a "set" whose intended purpose is to support a tree. Resort then, to GRIs 3(b) and 3(c) must be made in order to classify the product under the HTSUSA.

GRI 3(b) states that in all these cases the goods are to be "classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

As to which component imparts the essential character to the Tree Stake Kit, the relevant ENs direct Customs to consider the nature of each component in the set, its weight or value, or its role in relation to the use of the good. EN Rule 3(b)(VIII), p. 4, gives guidance, stating that "the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." Of the four components which constitute the Tree Stake Kit, it appears that the metal eyelets and textile fabric have less significance in the overall purpose and function of the kit than the rope and wooden stakes and therefore, are not worthy of consideration in determining the essential character of the kit.

We recognize that considerations as to value, construction and diversification of use, all may militate in favor of a conclusion that either the rope or the wooden stakes could impart the essential character. Based upon the information you provided Customs, the value breakdown for the Tree Stake Kit is as follows:

$0.14 each wooden stake
$0.05 polypropylene rope
$0.06 each eye bolt
$0.05 tree wrap

Given that the value of the wooden stakes, while overall inexpensive, is substantially greater than any other component in the tree stake kit, this value breakdown would support an assertion that the wooden stakes are the essential character of the tree stake kit.

Moreover, upon consideration of the "role of the constituent material in relation to the use of the goods," it would appear that the wooden stakes are manufactured to be used exclusively for the tree stake kit. The rope could be sold separately on the market exclusive of the kit and also appears to not have any specially manufactured characteristics for aiding in the supportive purpose of the tree stake kit. Whereas, the wooden stakes have a tapered bottom for easy insertion into the ground and also, a ridged top containing an angled drilled hole for inserting a metal eyelet which, according to the packaging advertisement and instructions, will aid in mowing and trimming around the tree.

Under GRI 3(b), therefore, we find that the article is to be classified according to the wooden stake in heading 4421, HTSUSA, as "other articles of wood."

You assert that the Tree Stake Kit "complies with the actual use requirements that provides for implements to be used for agricultural or horticultural purposes." Subheading 9817.00.50, HTSUSA, grants duty free treatment for "Machinery, equipment and implements to be used for agricultural or horticultural purposes * * *." To fall within this special classification a three part test must be met. First, the articles must not be among the long list of exclusions to heading 9817, HTSUSA, under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, HTSUSA. Secondly, the terms of the headings must be met in accordance with GRI 1, which provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Thirdly, the merchandise must meet the conditions required under 19 C.F.R. 10.133. (See HQ 950674, dated January 30, 1992.)

The first part of the test is to determine whether the Tree Stake Kit is excluded from heading 9817, HTSUSA. The tree stake kit is classifiable in heading 4421, HTSUSA, and as such is not *eo nomine* excluded from classification in heading 9817, HTSUSA, by operation of Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2. The first part of the test is therefore satisfied.

The second part of the test calls for the tree stake kit to be included within the terms of the heading as required by GRI 1. The tree stake kit must be "machinery", "equipment" or "implements" used for "agricultural or horticultural purposes." For this part of the test, the initial determination to be made is what agricultural or horticultural pursuit is in question.

Inasmuch as heading 9817, HTSUSA, does not provide a definition for "agricultural," the tariff term must be considered in accordance with its common and commercial meaning. *Nippon Kogaku (USA), Inc. v. United States*, 673 F.2d 380 (1982). To ascertain the common [and commercial] meaning [of a tariff term], in addition to relying upon its understanding of the terms used, the courts may consult dictionaries, lexicons, the testimony of record, and other reliable sources of information as an aid to its knowledge. *Pistorini & Co., Inc. v. United States*, 461 F. Supp. 331, 332 (1978). In doing so, Customs accepts that "agriculture" is defined as "the science or art of cultivating the soil, harvesting crops, and raising livestock." WEBSTER'S NEW WORLD DICTIONARY 26 (3rd College Ed. 1988). Furthermore, "horticulture" is defined as "the art or science of growing flowers, fruits, vegetables, and shrubs, esp. in gardens or orchards." *Id.* at 652.

The intended purpose of the tree stake kit is to stabilize a young tree while growing and since the product will facilitate the growth of the tree, the product can be deemed useful for agricultural or horticultural purposes. Customs has classified a rubber band type item used to stabilize young trees in subheading 9817.00.5000, HTSUSA, contingent upon meeting the actual use requirements of 19 C.F.R. § 10.131– §10.139. (See NY C81074, dated Nov. 19, 1997). Therefore, the requirements of the second part of the test is satisfied.

The third part of the test is that the requirements of 19 CFR §10.131– §10.139 be met. If these actual use requirements are satisfied, the third part of the test will be met.

Holding:

NY F83565 dated March 16, 2000, is hereby revoked.

The merchandise under consideration is classified in subheading 4421.90.9840, HTSUSA, which provides for "other articles of wood: other: other: other: other." The general column one duty rate is 3.3 percent *ad valorem*. However, the merchandise under consideration is eligible for duty free treatment under subheading 9817.00.5000, HTSUSA, provided the actual use requirements of section 10.131–10.139, Customs Regulations (19 CFR 10.131–10.139), are satisfied.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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